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CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 7th August, 2023

No. 13/1/9995-HII(2)-2023/11367.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 34/2022 dated 13.05.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

CHAND KHAN S/O SH. AZI MULLA KHAN, H.NO.254-A, BEHLANA, NEAR AIRPORT,
U.T.CHANDIGARH. (Workman)

AND

M/S GEM STEEL FABRICATORS, PLOT NO. 159, INDUSTRIAL AREA, PHASE-II,
CHANDIGARH THROUGH ITS PROPRIETOR. (Management)

AWARD

1. Chand Khan, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that on 01.04.1980 the workman was appointed by the management as *Mistri* (Mechanic) and he remained in continuous & uninterrupted employment of the management up to 10.06.2021 when his services were illegally & wrongly terminated by refusing work. At the time of termination, the workman was drawing ₹10,800/- as wages. On 10.06.2021 the management refused work to workman on the pretext that the services of the workman are no more required. Since his termination the workman is regularly visiting the factory but the work was denied to him on one pretext or other. Refusal of work, which amounts to termination, is retrenchment under Section 2(oo) of the ID Act. The management has also violated Section 25-F and 25-H of the ID Act. No charge sheet was issued, no inquiry was held and the workman was not paid retrenchment compensation at the time of termination. The management has

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appointed fresh person in place of the workman. For his reinstatement, the workman served upon the management a demand notice dated 12.07.2021. The management neither replied the demand notice nor took the workman back on duty. The Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh was requested for his intervention. The Assistant Labour Commissioner intervened but no settlement could be made possible during the stipulated period. During the course of conciliation proceedings, the management submitted a letter dated Nil denying all the contents of the demand notice. The workman replied the letter on 17.11.2021 and reiterated the contents of the demand notice. The workman gave his consent to join his duties with immediate effect but the management did not allow him to join duty. Termination by the management is illegal, wrong, motivated, against the principles of natural justice and unfair labour practice. The workman is, therefore, entitled to reinstatement. Prayer is made that the workman may be reinstated with full back wages as the workman remained unemployed during the period i.e. from the date of termination till date, with continuity of service and with all attendant benefits and without any change in his service conditions.

3. On notice, the management appeared through its authorized representative and contested the claim of the workman by filing written statement on 20.09.2022, wherein preliminary objections are raised on the ground that the claim statement filed by the workman is gross abuse of process of law with the sole purpose of harassing and pressurizing the answering management to submit unreasonable demand as the same is based on false, frivolous and baseless facts. The workman has not approached this Court with clean hands and concealed & misrepresented the facts as the workman has voluntarily left the job of his own accord without any intimation to the management. When the workman filed the demand notice before the Conciliation Authority, the management at very first hearing offered him to join the management but the workman refused to accept the offer of the management. On each & every date of hearing before the Conciliation Authority, the management offered the workman to join duty but he constantly refused to join the management. The management never terminated the services of the workman at any point of time rather it is the workman who is not interested to join and work with the management. The management is still ready to allow the workman to join his duty.

4. On merits, it is denied that the workman joined or appointed on 01.04.1980 with the management and the services of the workman were ever terminated by the management. In-fact the workman stopped coming to the office without any information to the management and absented himself from duty in unauthorized manner. The management has not violated any provisions of the ID Act and no fresh person in place of the workman has been engaged. The place of the workman is still vacant. It is admitted that the workman served the demand notice. It is stated that it is the workman, who did not accept the offer of the management, to rejoin his duty. The workman is harassing the management by making false accusation against the management. Averments of the preliminary are reiterated and remaining averments of the claim statement are denied. Prayer is made that the claim statement is liable to be dismissed in view of submissions made in the preliminary objections and also reply on merits.

5. The workman filed rejoinder, wherein the contents of written statement are denied as wrong except the admitted facts of the claim and the averments of the statement of claim are reiterated.

6. From the pleadings of the parties, following issues were framed vide order dated 06.02.2023 :—

1. Whether the termination of the workman is illegal ? OPW
2. If issue No.1 is proved in affirmative, whether the workman is entitled to reinstatement with continuity of service, full back wages and all other consequential benefits, as prayed for ? OPW
3. Whether the claimant has no locus standi and cause of action ? OPM

4. Whether the statement of claim is not maintainable ? OPM
5. Relief.

7. In evidence, the workman examined himself as AW1 and in his examination-in-chief tendered his affidavit Exhibit 'AW1/A'. During the pendency of the present industrial dispute, case taken up in Pre-Lok Adalat on 10.05.2023, wherein the workman got recorded his statement, which is reproduced as below :—

'Stated that I have settled my dispute with the management and have received ₹40,000/- (in cash) and chequel No. 433940 dated 10.05.2023 fore ₹1,00,000/-of Indian Bank, SCO No.38-39, Madhya Marg, Sector 7-C, Chandigarh from the management towards full & final settlement of my claim whatsoever against the management including right of reinstatement. Copy of cheque is Mark 'A'. I do not want to pursue my present industrial dispute. The same may kindly be disposed off accordingly in the Lok Adalat.'

Statement of the workman is countersigned by his Representative.

8. On 13.05.2023, case taken up in National Lok Adalat. Heard. In view of the statement of the workman recorded on 10.05.2023, this industrial dispute is disposed off as settled by way of compromise. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . .,

The 13.05.2023.

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 7th August, 2023

No. 13/1/9994-HII(2)-2023/11369.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 4/2022 dated 13.05.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

MOHAN SINGH - FIELD EXECUTIVE, AGED ABOUT 34 YEARS S/O NARSI SINGH, R//O VILLAGE TIRA, P.O. TIRA, TEHSIL KHARAR, DISTRICT SAS NAGAR MOHALI, PUNJAB (Workman)

AND

- (1) INFOMAX MANAGEMENT SERVICES PVT. LTD., SCO NO. 186-188, 3rd FLOOR, CABIN NO.6, SECTOR 17, CHANDIGARH THROUGH ITS BRANCH MANGER MANOJ CHAMOLI, MOBILE NO.9876035972
- (2) INFOMAX MANAGEMENT SERVICES PVT. LTD., HEAD OFFICE 4E, 16, 17, TYPE 4, BLOCK B, JHANDEWAL EXTENSION, HANDEWLA, NEW DELHI -110055 THROUGH ITS DIRECTOR SANJEEV SARIN, MOBILE NO. 9811012879. (Management)

AWARD

1. Mohan Singh, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the workman was working with the management as Field Executive at Chandigarh office. He joined in the year 2010. Since then the workman was working with the management without any break. The salary of the workman working as Field Executive is ₹ 10500/- per month plus the amount of PF deposited in his PF account plus conveyance charges. The workman was initially receiving the salary through cheque and later on the same is deposited in his account. During the entire tenure of service with the management there was no complaint against the workman and there was no complaint from any customer against him. Work & conduct of the workman was up to mark. Job profile of the workman was to collect the cheques from the field (customers of the management) and handover to persons authorised by the management. On 18.08.2020 the workman and other similar situated persons came to their work place but the Branch Manager Sh. Manoj Chamoli, Chandigarh Branch did not allow them to join their respective duties. Even the Branch Manager did not pay any heed to the request of the workman to join duty and told the workman that his services are no longer required without assigning any reason. Action of the Branch Manager Manoj Chamoli terminating the services of the workman without any charge-sheet, inquiry and without advance notice and compensation, is illegal, unlawful and wrongful. The workman along with other terminated persons filed a complaint dated 17.08.2020 against the Branch Manager Manoj Chamoli before the police authorities and during proceedings therein the Branch Manager admitted his fault regarding illegal termination / retrenchment of the workman and given an undertaking dated 25.08.2020 wherein he mentioned that he will allow the workman and other similar persons, whose services were terminated, and can join their respective duties from 26.08.2020. On 26.08.2020 when the workman and other similar situated persons came to join their duties found that the Branch Manager has locked the office and not picking their phones. Photos of the office having locked with the date of newspaper are with the workman. Thereafter the workman sent their joining report through post. Copy of the postal receipt are with the workman and further the receipts from the website of postal department showing delivery of the letters are also with the workman. The workman also sent a demand notice to the management to accept his claim but the same is in vain. The workman has completed 240 days service with the management therefore the management has not complied with the provision of Section 25-F of the ID Act. The management retained some fresh hand in service or also got done work from competitive agency employees so the action is against the principles of natural justice. The management has not complied with the provisions of the ID Act. The management has illegally terminated the services of the workman w.e.f. 18.08.2020. The management has not issued any advance notice to the workman, never paid compensation, never conducted any inquiry and issued any charge sheet at the time of termination of the workman. Even no personal hearing was given to the workman at the time of termination. The management with malafide intention to cover their own act issued notices with regard to strike held by the workman. Those notices are afterthought act of the management and on that particular date the workman was on duty and in this regard he has sufficient proof. The management has violated the provisions of Section 25-F, 25-G & 25-H of the ID Act. The workman is unemployed after termination and is not gainfully employed anywhere though he has tried his best. Prayer is made that the services of the workman be reinstated with continuity of service, full back wages from the date of his termination and with all consequential benefits.

3. On notice, the management appeared through its authorized representative and contested the claim of the workman by filing joint written statement on 20.07.2022, wherein preliminary objections are raised on the ground that the present industrial dispute has been raised against the wrong name of the management. The complete and correct name of the management is 'M/s Infomax Management Services (India) Pvt. Ltd. and not 'M/s Infomax Management Services Pvt. Ltd. Since the present industrial dispute has been raised against the wrong / incomplete name of management so the present industrial dispute of the workman is strictly

liable to be dismissed. The workman has not approached this Court with clean hands and opted to hide some key relevant facts in order to achieve his ulterior motive. It is submitted that when the workman started absenting from his duties un-authorisedly w.e.f. 18.08.2020, the management sent him letters (s) dated 22.08.2020, 31.08.2020, 02.09.2020 & 15.09.2020 through speed post asking the workman thereby to resume on his duties. In reply to the demand letter of the workman, the management sent reply dated 24.09.2020 under speed post reiterating their stand that they never terminated the services of the workman and asked the workman to join back on his duties. Before the Learned Conciliation Officer / Assistant Labour Commissioner during the conciliation proceedings, the management submitted a written submission on 21.10.2020, 04.11.2020 and also moved an application on 21.12.2020 asking the workman thereby to resume back on their duties and reiterated that the management had never terminated their services rather the workman had himself started absenting from his duties un-authorisedly w.e.f. 18.08.2020. Despite all above efforts of the management, the workman kept upholding his adamant attitude and never accepted the offer of the management. Hence, the present industrial dispute of the workman is strictly liable to be dismissed in the interest and furtherance of justice. The workman is not entitled to raise the claim of reinstatement before this Court as the workman had himself refused to join back on his services before the Conciliation Officer on 05.01.2021. The said factum also got recorded in the quasi judicial proceedings. Considering number of correspondences by the management, offer before the Learned Conciliation Officer given by the management and refusal by the workman to join back on his duties, the presumption can be very easily drawn that the workman has abandoned his services and pursuing the present claim with the sole motive to satisfy his ulterior motive and mala fide intention, therefore, the present industrial dispute may be dismissed in the interest of justice.

4. On merits, it is pleaded that the workman started working for the management w.e.f. 05.01.2010 as a Pick-up Boy. The workman was duly provided with the letter of appointment at the time of his recruitment by the management. The services of the workman never got illegally terminated by the management rather the workman had himself started un-authorisedly absenting from his duties w.e.f. 18.08.2020. The management extended numerous offers to the workman to join back on his duties but unfortunately to no avail. Moreover, the workman refused to join back on his duties before the Learned Conciliation Officer on 05.01.2021. The workman had always been provided with wages in accordance with the rate as declared by the concerned State Government besides other legal facilities. It is a matter of record that the workman initially received the salary through cheque and later on the same deposited in his account. It is denied that there was not even a single complaint against the workman or the conduct of the workman was up to mark. The management always opted to ignore the mistakes(s) of the workman in order to maintain cordial relation in between the employer-employee and ensure peaceful working environment in the establishment. It is a matter of record that job profile of the workman is to collect the cheques from the field (customers of the management / organisation) and handover to persons authorised by the management. However, it is submitted that due to the nature of job, the workman used to serve only from 10 A.M. to 01:00 P.M. during his ordinary course of service. It is denied that the action of the Branch Manager - Manoj Chamoli, terminating the workman without any charge sheet or inquiry or without any advance notice / compensation is illegal. It is submitted that firstly, the services of the workman were never illegally terminated by the management rather he had himself started absenting from his duties. Secondly, even otherwise the services of the workman cannot be terminated by the person below the appointing authority. It is a matter of record that the workman along with other persons filed a complaint dated 17.08.2020 against the Branch Manager Manoj Chamoli before the police authorities. However, the issue regarding illegal termination falls beyond the jurisdictional scope of police authorities. Secondly, the workman by invoking his personal contacts / relations approached one - Mr. Ajay Singh, who was then deployed at Mohali Police Station. He called the Branch Manager through his mobile Phone No.+91-9501610016 on 25.08.2020 and asked him to report at Mohali P.S. immediately. When Sh. Manoj Chamoli, Branch Manager reached the police station, he was pressurized to write such letter which neither he ever intended to nor the contents of the same bear any reality. When the management came to know about the entire incident, the management directed the Branch Manager to file a complaint narrating all true facts at Sector 17 P.S.

Chandigarh. Hence, the statement obtained by the Branch Manager by exercising force and coercion does not hold any veracity in law and therefore, the same is liable to be rejected in the interest of justice. The workman never turned back on his duties after absents un-authorisedly from his duties w.e.f. 18.08.2020. The workman never came to join his duty on 26.08.2020. The management replied to the demand notice vide letter dated 24.09.2020 and asked the workman to join back on duties immediately. It is a matter that the workman completed 240 days or not. The workman was sent number of correspondences to join back and offer to join back was also extended before the Conciliation Officer. However, when the workman refused to join back duties, the management was left with no other alternative but to get the work done by engaging fresh hands. The management has not committed violation of any of the provisions of the ID Act. Further averments made in the preliminary objections are reiterated and rest of the averments of claim statement are denied. Payer is made that the present claim / industrial dispute of the workman does not merit any consideration and may be dismissed.

5. The workman filed replication, wherein the contents of written statement are denied as wrong except the admitted facts of the claim and the averments of the statement of claim are reiterated.

6. From the pleadings of the parties, following issues were framed vide order dated 05.12.2022 :—

1. Whether the termination of the workman is illegal ? OPW
2. If issue No.1 is proved in affirmative, whether the workman is entitled to reinstatement with continuity of service, full back wages and all other consequential benefits ? OPW
3. Whether the workman has not approached the court with clean hands and concealed the material facts ? OPM
4. Whether the claim statement is not maintainable in the present form ? OPM
5. Relief.

7. On joint request of the parties, the case taken up in Pre-Lok Adalat on 03.05.2023, wherein the workman got recorded his statement, which is reproduced as below :—

"Stated that I have received demand draft No. 346950 dated 01.05.2023 for a sum of ₹ 1,15,000/- drawn on Punjab National Bank New Delhi - A, Block Connaught Place, (New Delhi) Delhi - 110001 towards full & final settlement of my claims including right of reinstatement. Full & final settlement receipt is Exhibit 'C1', which bears my signatures as well as thumb impression. I do not intend to further pursue my present industrial dispute being compromised. My present industrial dispute may be disposed off accordingly in the Lok Adalat."

Statement of the workman is countersigned by his Representative.

8. On 13.05.2023, case taken up in National Lok Adalat. Heard. In view of the statement of the workman recorded on 03.05.2023, this industrial dispute is disposed off as settled by way of compromise. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . . ,

The 13.05.2023.

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 7th August, 2023

No. 13/1/9998-HII(2)-2023/11371.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 88/2018 dated 22.05.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

RAJA RAM AGED 50 YEARS S/O LATE SH. SUKHDEV R/O HOUSE NO.85,
BHAGWANTPURA, VILLAGE KISHANGARH, U.T. CHANDIGARH. (Workman)

AND

THE PROPRIETOR, M/S FRONTIER PEST CONTROL LIMITED, 7A, MADHYA MARG,
SECTOR 7C, U.T. CHANDIGARH-160009. (Management)

AWARD

1. Raja Ram, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the workman joined the services of M/s Frontier Pest Control Limited w.e.f. 07.03.1996 and worked continuously without any interruption or break in service till 26.10.2016, when the management terminated his services by passing verbal orders to this effect on 27.10.2016. The workman worked as Technician in the Department of Operations, a highly skilled job and was drawing wages @ ₹ 10,000/- per month. The workman performed his duties up to the full satisfaction of his superiors and the employer / management never issued him show cause notice, warning, charge sheet or any other memo to question his work & conduct throughout his entire service period of 20 years 7 months and 19 days. The workman was performing his duties from 8:00 A.M. to 8:00 P.M. i.e. 12 hours duty per day. For this duty he was paid lump sum ₹10,000/- per month which was below the rate of minimum wages for a skilled workman as he was handling and spraying deadly poisonous insecticide and pesticide. He was demanding over time for 4 hours daily as per law. The management was not ready to make the payment of earned wages as per the provisions of Payment of Minimum Wages Act and also fixed by the Labour Department of Chandigarh Administration. The management also threatened the workman that he will be thrown out of services, if he demanded wages as per the law. On 27.10.2016, the workman came to join his duties as per the routine but he was not allowed duty. The order of not joining the duty was verbal. The workman asked the reasoning but he was physically pushed out of the premises by the management. At the time of joining i.e. 07.03.1996 the workman was not issued appointment letter and designation letter, identity card and attendance card in violation to labour laws and to suppress and conceal the relationship of employer and workman. The termination of the workman is illegal, unjustified, against the principles of natural justice, highly arbitrary and patently malafide on the following grounds :—

- i) The workman completed 20 years 7 months and 19 days continuous service and at the time of his verbal termination, neither he was paid notice pay nor retrenchment compensation nor issued notice of retrenchment prior to his retrenchment. The verbal termination order dated 27.10.2016 is in violation of Section 25-F of the ID Act.
- ii) The termination of service is not termination simplicitor but termination by way of punishment as the workman was raising issue of payment of wages as per law.

- iii) The juniors to the workman were retained in service and the services of the workman were terminated in violation of Section 25-G of the ID Act.

The workman raised demand notice on 19.12.2016 before the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh but the conciliation proceedings failed. The verbal termination order being illegal, the workman is entitled for his reinstatement in the service with continuity of service, full back wages and all the service benefits applicable as per rules. Prayer is made that the claim statement may be accepted.

3. On notice, management contested the claim statement by filing written statement 22.01.2019 wherein preliminary objections are raised on the grounds that the workman has deceived and mislead the Court and has initiated proceedings without full disclosure of facts and therefore, the workman has approached this Court with unclean hands. In fact, the demand notice and present reference has been filed with an ulterior motive to arm-twist the management and is ultimately aimed at fraudulent monetary gain. The workman has absented himself from his duties and subsequently abandoned his job. The workman was un-authorisedly found absent and to avoid disciplinary action, the workman abandoned his job and never returned. The workman has maliciously suppressed the material facts with intent to dupe the management and the Court.

4. Further on merits, it is denied that the services of the workman were verbally terminated by the management. In fact, the workman reported for duty on 01.10.2016 and prior to this on 26.09.2018 he had submitted a leave application for the period w.e.f. 03.10.2016 to 08.10.2016 which was approved by the management. The workman did not report back for his duty on 09.10.2016 and remained un-authorisedly absent from 09.10.2016 to 14.10.2016. Thereafter, the workman reported back for duty on 15.10.2016. When explanation was sought from the workman as to why he did not report for duty after more than 6 days of un-authorised absence, the workman did not offer any explanation. The workman thereafter worked from 15.10.2016 to 27.10.2016 and thereafter he remained un-authorisedly absent from his duties. The management approached the workman through phone calls and various letters but workman neither responded to calls nor replied to any letter / notice. The conciliation proceedings are matter of record. Authorised Representative on behalf of the management put appearance before the Learned Conciliation Officer and presented proof as to how the workman has abandoned his job and has un-authorisedly absented himself from his duties, despite repeated reminders to join back. The authorised representative also submitted before the Learned Conciliation Authority that due to workman remaining un-authorisedly absent for the period of 09.10.2016 to 14.10.2016 disciplinary action was to be taken against the workman. Therefore, in order to avoid the same the workman raised the demand notice with frivolous facts so that he may arm-twist the management. The authorised Representative also stated to the Learned Conciliation Officer that the management is still inclined to take back the workman on duty so as to enable him to offer an explanation for his un-authorised absence. The workman initially joined as Helper with the organisation and never worked as a Technician with the organisation. The workman had shift commencing at 9:15 A.M. till 5:45 P.M. with half an hour rest and meal interval from 1:30 to 2:00 P.M. The management paid salary to the workman strictly adhering to the applicable minimum wages under the law. The workman never reported for duty on 27.10.2016 and remained un-authorisedly absent thereafter. The workman was issued appointment letter and identity card and the management does not deny employer-employee relationship with the workman. The workman was neither terminated nor physically pushed out of the organisation. In fact the workman has himself abandoned the job by remaining un-authorisedly absent from duties. The management is still inclined to take back the workman on duty and also to seek explanation regarding his un-authorised absence and to take appropriate disciplinary action if the same is found unsatisfactory. Further similar stand is taken as in the preliminary objections. Rest of the averments of claim statement are denied as wrong and prayer is made that the present reference may be dismissed being not maintainable.

5. Replication not filed. From the pleadings of the parties, following issues were framed vide order dated 10.05.2019 :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Relief.

6. In evidence the workman Raja Ram examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with documents Exhibit 'W1' to Exhibit 'W3'.

Exhibit 'W1' is copy of demand notice dated 03.10.2016 raised by the workman, addressed to the Proprietor M/s Frontier Pest Control Limited, Chandigarh.

Exhibit 'W2' is postal receipt dated 05.11.2016.

Exhibit 'W3' is failure report bearing Memo No.1310 dated 28.03.2017 of Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh.

On 20.12.2022 the workman closed evidence.

7. On the other hand, management examined MW1 Dillu Ram - Director, M/s Frontier Pest Control Limited, Chandigarh who tendered his affidavit Exhibit 'MW1/A' along with documents Exhibit 'M1' to Exhibit 'M9'.

Exhibit 'M1' is original Resolution dated 03.01.2023 passed by the Board of Directors of management.

Exhibit 'M2' to Exhibit 'M5' is copies of attendance register for the period from October 2016 to January 2017 respectively (original of Exhibit M-2 to Exhibit M-5 seen and returned).

Exhibit 'M6' is registered envelope containing notice dated 05.11.2016 addressed to Raja Ram on his local address of Kishangarh which was received back undelivered with the postal endorsement 'addressee left' and returned to sender (RTS) having affixed original postal receipt dated 07.11.2016.

Exhibit 'M7' is registered envelope containing notice dated 05.11.2016 addressed to Raja Ram on his permanent address of District Pratapgarh which was received back undelivered with the postal endorsement 'left without any information' and returned to sender having affixed original postal receipt dated 07.11.2016.

Exhibit 'M8' and Exhibit 'M9' is office copy of notices dated 05.11.2016 sent to the workman on his local address and permanent address.

In cross-examination of AW1 Raja Ram the management had put documents to him i.e. leave application dated 29.09.2016 vide Exhibit 'MX/1', demand notice dated 03.10.2016 sent to the management vide Exhibit 'MX/2' (already exhibited by the workman vide Exhibit 'W1').

On 15.05.2023 Learned Representative for management closed evidence.

8. I have heard the arguments of Learned Representatives for the parties and have perused the judicial file. My issue-wise findings are as below :—

Issue No. 1 :

9. Onus to prove this issue on the workman.

10. Under this issue, workman Raja Ram examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for the sake of brevity. AW1 supported his oral version with documents Exhibit 'W1' to Exhibit 'W3'.

11. On the other hand, management examined MW1 Dillu Ram - Director, M/s Frontier Pest Control Limited, Chandigarh, who vide his affidavit Exhibit 'MW1/A' deposed that he is duly authorised to depose as a witness vide resolution dated 03.01.2023, copy of which is Exhibit 'M1'. Further MW1 in his affidavit have deposed the entire contents of the written statement which are also not reproduced here for the sake of brevity. MW1 supported his oral version with documents Exhibit 'M1' to 'M9'.

12. In this case apart from challenging the termination being illegal, the workman is claiming over time for 4 hours days on the ground that the workman was performing his duties from 8:00 A.M. to 8:00 P.M. daily i.e. 12 hours duties per day but he was paid lump sum ₹10,000/- per month. On the other hand, management has denied the fact that the workman had performed any over time duty and has taken the plea that the workman had shift commencing at 9:15 A.M. till 5:45 P.M. with a half hour rest and meal interval from 1:30 to

2:00 P.M. The management paid the salary to the workman strictly adhering to the applicable minimum wage under the law. To my opinion, in the present case the workman is seeking remedy under Section 2-A of the ID Act. The scope of Section 2-A of the ID Act is confined to dismissal, discharge, retrenchment or termination of the workman and the over time wages does not fall within the scope of Section 2-A of the ID Act.

13. From the oral as well as documentary evidence led by the parties, it comes out that the workman has alleged that he joined M/s Frontier Pest Control Limited w.e.f. 07.03.1996. MW1 when put to cross-examination stated that he does not remember if Raja Ram is working with the management from 07.03.1996. Under the law the fact which is not specifically denied by a witness is deemed to be admitted. Accordingly, it is proved on record that the workman joined the management w.e.f. 07.03.1996. In cross-examination of MW1 the workman by way of suggestion admitted the fact that he proceeded on sanction leave for the period w.e.f. 03.10.2016 to 08.10.2016. MW1 in his cross-examination admitted as correct that the workman proceeded on sanctioned leave for the period w.e.f. 03.10.2016 to 08.10.2016. The management has alleged that the workman did not report back for his duty on 09.10.2016 and remained un-authorisedly absent from 09.10.2016 to 14.10.2016 and thereafter the workman reported back for duty on 15.10.2016. When explanation was sought from the workman regarding his un-authorised absence, the workman did not offer any explanation. Thereafter, the workman worked from 15.10.2016 to 27.10.2016 and thereafter workman again un-authorisedly absented himself from his duties. MW1 in his cross-examination stated that the workman went to his native village while on sanctioned leave. The workman remained absent from duty w.e.f. 09.10.2016 to 04.10.2016. Thereafter, the workman joined the duty w.e.f. 15.10.2016. The management verbally enquired from the workman about his un-authorised absence. MW1 further stated that the workman continuously worked up to 27.10.2016 and from 28.10.2016 workman did not return on duty. Whereas the case of the workman is that he performed duty up to 26.10.2016 and his services were terminated by verbal order w.e.f. 27.10.2016. AW1 in his cross-examination stated that he has worked with the management from 07.03.1996 to 26.10.2016. AW1 stated that he does not remember whether he has taken leave for the period from 03.10.2016 to 08.10.2016. He has seen his leave application dated 29.09.2016 / Exhibit 'MX1' which bears his signatures. AW1 admitted as correct that he had not joined his duties after completion of leave period and he did not join till 14.10.2016. AW1 voluntarily stated that he was in his native village. He did not submit any explanation for his extended leave till 14.10.2016. He informed Shri Dillu Ram Sharma - Manager telephonically about his extended leave. The aforesaid version of AW1 supports the plea of management that the workman proceeded on leave beyond 08.10.2016 without getting the same sanctioned from the management. In cross-examination AW1 admitted as correct that the address of his native village is Gram Badgo, Post Gadi Manikpur, Tehsil Kunda, District Partapgarh, Uttar Pradesh. AW1 admitted as correct that his local address is 168, Kishangarh, Manimajra, Chandigarh. From the undelivered registered envelope Exhibit 'M6' bearing postal receipt dated 07.11.2016 it is duly proved on record that the management has issued a notice of un-authorised absence of the workman to his local address of Kishangarh but the said registered envelope was not delivered to the workman and as per the postal endorsement 'the addressee left' and RC was returned to sender (RTS). It is further proved on record that vide registered post bearing postal receipt 07.11.2016 the management has issued notice of un-authorised absence of workman to his permanent address of Gram Badgo, Post Gadi Manikpur, Tehsil Kunda, District Partapgarh, Uttar Pradesh but the same was returned undelivered with the postal endorsement that addressee has shifted, thus returned to sender (RTS). The notice of un-authorised absence dated 05.11.2016 i.e. Exhibit 'M8' and Exhibit 'M9' was issued to the workman on his correct local as well as permanent address. Thus, the management has put in all its efforts to serve the notice of un-authorised absence from duty to the workman through valid mode of communication. It is not the case of the workman that he ever communicated to the management his recent address for correspondence except his address of his native village Gram Badgo, U.P. and his local address of Kishangarh. In case, the workman did not receive the registered post containing notice of un-authorised absence, in that situation the management was required to initiated domestic inquiry against the workman after issuing show cause notice, charge sheet etc. but the same has not been done in this case. In this regard MW1 in his cross-examination stated that during service period of about 20 years and 7 months, the management never issued any memo, show cause notice to the workman and never hold any domestic inquiry against him. The management has not settled the final dues of the workman. In this regard

MW1 in his cross-examination stated that the management never offered the workman to settle his final dues. As discussed above, the total service period of the workman with the management is about more than 20 years. The workman has continuously worked for 240 days in twelve calendar months preceding his termination i.e. 28.10.2016. Once the workman has completed 240 days of service as required under Section 25-B of the ID Act, the provisions of Section 25-F of the ID Act stands attracted. For better appreciation Section 25-F of the ID Act is reproduced below :—

"25F. Conditions precedent to retrenchment of workmen - No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In the present case, the contents of notice dated 05.11.2016 Exhibit 'M8' issued through registered post Exhibit 'M6' and notice dated 05.11.2016 Exhibit 'M9' issued through registered post Exhibit 'M7' does not fulfil the requirement of Section 25-F of the ID Act. In notice Exhibit 'M8' and Exhibit 'M9' the workman was directed to report on duty till 11.11.2016. Otherwise he will be deemed to have abandoned his employment. Thus, vide notice Exhibit 'M8' and Exhibit 'M9' which are of dated 05.11.2016 issued vide postal receipts dated 07.11.2016 the workman was provided only 5 days from the date of issuance of notice to join duty. Thus, notice Exhibit 'M8' and Exhibit 'M9' is not one month's prior notice indicating the reason for retrenchment. In this manner, the management has neither issued one month's prior notice to the workman nor offered notice pay in lieu of notice period to the workman, which makes the termination order illegal being violative to Section 25-F of the ID Act. Consequently, the termination of services of the workman is illegal. As such, the workman is held entitled to reinstatement with continuity of service and 50% back wages.

15. Accordingly, this issue is decided in favour of the workman and against the management.

Relief :

16. In the view of foregoing finding on the issue above, this industrial dispute is allowed. The workman is entitled for reinstatement with continuity of service and 50% back wages. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till the date of actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

The 22.05.2023.

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 7th August, 2023

No. 13/2/5-HII(2)-2023/11373.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 57/2018 dated 07.06.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

RAJ KUMARI, AGED 28 YEARS, D/O SH. SIA RAM, R/O HOUSE NO.155, NEW INDIRA COLONY, MANIMAJRA, U.T. CHANDIGARH. (Workman)

AND

1. M/S TECH MAHINDRA PLOT NO.23, PHASE-II, IT PARK, KISHANGARH, U.T. CHANDIGARH THROUGH ITS MANAGER.
2. MARS FACILITIES (P) LTD., Z-426 A, SECTOR 12, NOIDA, U.P. THROUGH ITS MANAGING DIRECTOR. (Management)

AWARD

1. Raj Kumari, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the workman was orally appointed as 'SafaiKaramchhari' (House-Keeping) and joined her service with MARS Facilities (P) Ltd. i.e. management No.2 on 20.04.2012 on monthly wages. The workman has served with the management for about 5 years and 10 months continuously and completed continuous service of more than 240 days in a calendar year with M/s Tech Mahindra i.e. management No.1. The management orally terminated the services of the workman w.e.f. 01.02.2018 without any show cause notice, charge-sheet, inquiry, notice pay and retrenchment compensation. At the time of retrenchment, the workman was drawing ₹ 9,630/- per month as wages. After the illegal termination of the workman from her services, the management has appointed and joined Sunita as new hands. The juniors of the workman are still in service with the management. The management has not complied with the provision of Sections 25-F and 25-N of the ID Act and is running unfair labour practice. The work & conduct of the workman during the course of her employment remain very satisfactory and no inquiry, charge-sheet was ever issued or initiated during her employment or after illegal termination of services. The workman is unemployed since then and has no source of livelihood. After the illegal termination of services, the workman issued demand notice dated 27.03.2018, demanding her re-instatement with continuity of services along with full back wages but the management did not accede to the request of the workman. In pursuance to the demand notice dated 27.03.2018, the conciliation proceedings before the Assistant Labour Commissioner (ALC)-cum-Conciliation Officer, Chandigarh failed vide order dated 15.06.2018. Prayer is made that workman may be reinstated with continuity of service along with full back wages.

3. On notice, management No.1 (M/s Tech Mahindra) contested the claim statement by filing written statement on 02.09.2019, wherein preliminary submissions are made to the effect that statement of claim is not maintainable against management No.1 as there is no employer-employee relationship between management No.1 and the workman-claimant. There can be no lis between them in terms of Section 2(k) of the ID Act. The workman-claimant in claim statement averred that she was an employee of labour contractor MARS

*This is Digitally Signed Gazette. To verify, visit :
<https://egazette.chd.gov.in>*

Facilities Pvt. Ltd. (management No.2) and not of management No.1. The workman-claimant further averred that she was appointed by the management No.2, who is a labour contractor for management No.1 and she joined her services with the said contractor on 20.04.2012. The management and the control of contract labour was always under the management No. 2. The management No.1 and management No.2 are duly registered under the Contract Labour (Regulation & Abolition) Act, 1970 (*here-in-after in short referred as '1970 Act'*). The management No. 1 has been issued registration certificate bearing Registration No. PE/CL/UT/CHD/181. The name of management No.2 (labour contractor) is duly mentioned in the said certificate for providing manpower for house-keeping services. Hence, the workman-claimant cannot claim to have any relationship of being an employee qua the management No.1, as per settled law. The management No. 2 has entered into an agreement dated 01.04.2017 with management No.1 titled as Agreement for House-Keeping Services. The said agreement was for period of 12 months only. The workman-claimant was an employee of management No. 2 and was deployed for house-keeping service in pursuance to said agreement in the office premises of management No. 1. The said agreement stands expired on 31.03.2018.

4. Further on merits, it is denied for want of knowledge that workman-claimant was orally appointed as '*SafaiKaramchari*' and joined her services with management No.2 on 20.04.2012 on monthly wages. In fact, the workman-claimant cannot be considered to be "workman" under Section 2(s) of the ID Act qua the management No.1 as the workman-claimant was not an employee of the answering management. The workman-claimant was an employee of the management No.2 who was providing house-keeping services to the answering management on a contract basis. Hence, the claim is not maintainable against the answering management. The fact that the workman-claimant remained in continuous service of the management for about 5 years and 10 months and completed more than 240 days in a calendar year with the management No.1 is denied for want of knowledge. The answering management not being the appointing authority or employer of the workman-claimant, could not terminate claimant's services. The workman-claimant was repeatedly not performing her duty properly since long despite repeated warnings. She had even submitted apology letters for her short comings. The answering management's official had through verbal and mail communications informed management No.2 regarding the non-performance of the workman-claimant from time to time. The workman-claimant was paid salary by the management No. 2 and not by the answering management. The workman-claimant was being paid by management No. 2 for number of days worked in a month. Since the services of the workman-claimant was provided by the management No.2 to the answering management under the agreement dated 01.04.2017, the management No.2 could provide different workers from time to time as suitable for the job who would perform duty properly. As per agreement the management No.2 was not bound to supply same worker throughout the contract period and answering management has legal rights under the agreement to obtain services from any other contract labour in the place of the workman-claimant as provided by the management No.2. The management and control of the contract labour is under the contractor i.e. management No.2. The workman-claimant is not an employee of the management No.1 and her services were not terminated by it, therefore, Section 25-F and Section 25-N are not applicable. The answering management has a valid license from the competent authority under 1970 Act for getting contract labour from the contractors. The work & conduct of the workman-claimant during the course of her employment never remained satisfactory. The workman-claimant was given many verbal warnings to improve her performance but she did not improve. Major complaints were often received from staff and senior management team that she was not cleaning washrooms regularly. Accordingly, her vender was informed to provide a replacement of a better worker at the earliest. Further, similar stand is taken as taken in the preliminary submissions. Rest of the contents of the claim statement are denied as incorrect and prayer is made that the claim statement qua management No.1 may be dismissed with cost.

5. Management No.2 (MARS Facilities (P) Ltd.) contested the claim statement by filing written statement on 18.10.2021 wherein preliminary objections are raised on the ground that the claim statement is not

maintainable as the services of the workman have been dispensed with as per the stipulation laid down in the appointment letter itself, as the same have been followed in letter and spirit. The alleged termination of the workman is an exception to the term 'retrenchment' as defined under Section 2(oo) of the ID Act. Hence, the provisions of Section 25-F of the ID Act is not attracted. The present claim statement is not at all maintainable as the services of the workman have been dispensed with in accordance with the stipulation contained in the appointment letter and it is not a case of termination as alleged by the workman, rather it is a case of abandonment by the workman, as the workman herself stopped coming to duty after 31.01.2018. The workman withdrew her EPF contribution, thereafter, which amounts to severance of her relationship with the answering management.

6. Further on merits, it is stated that the workman was appointed by the answering management w.e.f. 01.04.2017 as House-Keeping Lady on contract basis and was deployed with management No. 1. The appointment letter dated 29.03.2017 was issued to the workman. An agreement dated 01.04.2017 was entered into between management No.1 viz. M/s Tech Mahindra Ltd. and the answering management No.2 i.e. MARS Facilities (P) Ltd. for providing house-keeping services, for a period of 12 months or extended period as company may deem fit. As per the agreement workman was deployed by the management No.2 with the management No.1 w.e.f. 01.04.2017 and an appointment letter was issued to her in that behalf. The workman was appointed on contract basis w.e.f. 01.04.2017 till 31.03.2018 for a specific period and on the terms and conditions as agreed by the workman vide appointment letter dated 29.03.2017. She was deployed with the management No.1 w.e.f. 01.04.2017. On receiving of complaint on 23.01.2018 through mail against the workman from the management No.1, that the workman was not doing her duties of house-keeping i.e. cleaning of washrooms etc. properly and to their satisfaction and that the workman should be replaced. The answering management as per the stipulation laid down in the appointment letter issued a 15 days' advance notice in writing on 23.01.2018, effective from 25.01.2018 to 08.02.2018 to the effect that the services of the workman shall come to an end with the management No.1 but the workman did not report for duty with the management No.1 w.e.f. 31.01.2018 nor reported back to the answering management. Hence, the allegations with respect to her alleged termination without any notice etc. are totally false, rather the workman herself did not report for duty with the management No.1 w.e.f. 31.01.2018 nor with the answering management nor completed the period of notice, which amounts to abandonment of service. It is denied that Sunita was appointed or joined as new hands after the alleged termination of the workman, rather Sunita was already deployed in the service of management No.1 simultaneously with the workman. The work & conduct of the workman was not satisfactory as would be evident from the mail received from the management No.1 with respect to her work, besides other verbal complaints received there by the answering management and needless to say that workman has even apologized to the management No.1. It is not believable that workman would remain idle for such long time, when the work of house-keeping which she was doing is of such a nature which is available, in majority of establishments. The appointment of the workman was for a specific period and all the stipulations of the appointment letter were complied with before dispensing with her services. As per stipulation / Clause 10 of appointment letter, her services would have come to an end on 31.03.2018, since her appointment was for a specific period. As per stipulation / Clause 2 of the appointment letter, if the work of the workman is found unsatisfactory, the employer was required to give 15 days' notice before dispensing with the services of the workman, which stipulations of the appointment letter were fully complied by the answering management before dispensing the services of the workman. It is not a case of retrenchment but an exception thereto under Section 2(oo) (bb) of the I.D. Act. Hence, the question of illegal termination of the services of the workman does not arise at all. Consequently, the workman is not entitled to any relief whatsoever. In conciliation proceedings before ALC-cum-Conciliation Officer, U.T, Chandigarh the workman was adamant / rigid on her joining service with the management No.1 only. The answering management informed the ALC-cum-Conciliation Officer informed that he is a contractor / service provider having his main business at Delhi

/ Noida and the answering management does not have other principal employer in Chandigarh except management No.1. The answering management before the Conciliation Officer, on humanitarian grounds, even offered the workman to report to the answering management where he will try deploy at Delhi or Noida, since the answering management had no other principal employer at Chandigarh where she could be deployed but the workman flatly refused and remained stick to her demand of joining with the management No.1 i.e. M/s Tech Mahindra at Chandigarh. Hence, no settlement could be arrived at during the conciliation proceedings. Rest of the averments of the claim statement are denied as wrong and prayer is made that the claim statement may be dismissed being not maintainable and devoid of merits.

7. Replication not filed. From the pleadings of the parties, following issues were framed vide order dated 04.11.2019 :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether there is no employer-employee relationship between management No.1 and workman ? OPM-1
3. Relief.

8. In evidence, workman Raj Kumari examined herself as AW1 and tendered her affidavit Exhibit 'AW1/A' along with documents Exhibit 'AW1/1' to Exhibit 'AW1/8'. At the time of recording evidence the original of Exhibit 'AW1/1' to Exhibit 'AW1/8' were produced which were seen and returned. It is pertinent to mention here that during cross-examination of AW1 management No.2 put her documents i.e. appointment letter dated 29.03.2017 vide Exhibit 'R2/1', photocopy of letter dated 23.01.2018 vide Mark 'R1' and copy of EPF withdrawal form vide Mark 'R2'.

Exhibit 'AW1/1' is photocopy of the identity card issued to the workman Raj Kumari by Secure Well Conservancy Services, Noida, bearing designation H.K. Maid, date of issue 31.03.2015 and valid up to 31.03.2016.

ExhibitAW1/2" is photocopy of the pass issued to the workman Raj Kumari by Tech Mahindra, wherein name of service provider Secure Well-SW is mentioned and it bears date of issue 10.07.2015 and valid up to 09.07.2016.

Exhibit 'AW1/3' is photocopy of the identity card issued to the workman Raj Kumari by MARS Facilities (P) Ltd. bearing date of issue 01.04.2017 and valid up to 31.03.2018.

Exhibit 'AW1/4' is photocopy of the pass issued to the workman Raj Kumari by Tech Mahindra, wherein name of service provider Secure Well-SW is mentioned and it bears date of issue 10.11.2016 and valid up to 09.11.2021.

Exhibit 'AW1/5' is photocopy of the pass issued to the workman Raj Kumari by Tech Mahindra, wherein name of service provider Mars Facilities is mentioned and it bears date of issue 12.07.2017 and valid up to 11.07.2022.

Exhibit 'AW1/6' is photocopy of the pass issued to the workman Raj Kumari by Tech Mahindra, wherein name of service provider Mars Facilities is mentioned and it does not bear date of issue, valid up to 31.03.2019.

Exhibit 'AW1/7' is photocopy of ESIC card of workman bearing I.P. No. 1713103322.

Exhibit 'AW1/8' is photocopy of EPF Card of the workman bearing Universal Account Number (UAN) 100292469059.

Exhibit 'AW1/9' is an account statement relating to workman Raj Kumari bearing Account I.D. 036201530955.

Exhibit 'AW1/10' is demand notice dated 27.03.2018 issued by Raj Kumari to the Manager, Tech Mahindra and Managing Director MARS Facilities (P) Ltd.

Exhibit 'AW1/11' is the failure report prepared by ALC-cum-Conciliation Officer, U.T, Chandigarh bearing memo No. 2568/15.06.2018.

On 09.02.2021, Learned Representative for the workman closed evidence on behalf of the workman. It is pertinent to mention here that before framing of issues, management No.2 was proceeded against ex-parte vide order dated 26.09.2018. At the stage of evidence of the management No.1, an application seeking to set aside ex-parte order dated 26.09.2018 was moved by the management No.2 which was allowed vide order dated 24.09.2021. Thereafter, opportunity to conduct cross-examination of AW1 was provided to management No.2. Cross-examination of AW1 was recorded on 06.09.2022. The workman closed her evidence in affirmative on 06.09.2022.

9. On the other hand, management No.1 examined MW1 Anuj Suri - Senior Manager, Administration, Tech Mahindra Ltd., who tendered his affidavit Exhibit 'MW1/A' along with copies of documents Exhibit 'M1/1' to Exhibit 'M1/8'.

Exhibit 'M1/1' is letter dated 01.08.2017 issued from Registering Officer under the Contract Labour (R&A) Act, 1970, U.T, Chandigarh vide Exhibit 'M1/1'.

Exhibit 'M1/2' is license dated 08.08.2017 granted to M/s MARS Facilities Pvt. Ltd. Chandigarh by the Licensing Officer, Contract Labour, U.T, Chandigarh.

Exhibit 'M1/3' is Form - F under Section 14 of the Punjab Shops & Commercial Establishment Rule Act, 1958 along with agreement dated 01.04.2017 between M/s MARS Facility Pvt. Ltd.

Exhibit 'M1/4' is invoice dated 31.12.2017 of MARS Facilities Pvt. Ltd.

Exhibit 'M1/5' is letter dated 23.01.2018 addressed from MARS Facilities Pvt. Ltd. to Raj Kumari relating to 15 days advance notice.

Exhibit 'M1/6' is hardcopy of email record from January 23, 2018 to January 31, 2018.

Exhibit 'M1/7' is salary slips for the month of November 2017, December 2017 and January 2018 relating to Raj Kumari.

Exhibit 'M1/8' is apology letters dated 10.12.2016 and 14.10.2017.

10. Management No.2 examined MW2 Sanjay Kumar, Director, MARS Facilities Pvt. Ltd., who tendered his affidavit Exhibit 'MW2/A' along with copy of documents Exhibit 'M2/1' to Exhibit 'M2/3'.

Exhibit 'M2/1' is appointment letter dated 29.03.2017 issued by authorised signatory of management No. 2 in favour of workman Raj Kumari.

Exhibit 'M2/2' is copy of 15 days advance notice dated 23.01.2018 issued by the management No. 2 to the management No.1.

Exhibit 'M2/3' is E.P.F withdrawal form relating to workman Raj Kumari incorporating date of leaving service dated 31.01.2018 along with other details.

On 07.06.2023, Learned Representatives for the management No.1 & 2 vide their separate statements closed evidence.

11. I have heard the arguments of Learned Representative for the parties and perused the judicial file. My issue-wise finding are as below :—

ISSUE No. 2 :

12. Issue No.2 is taken up first, as it goes to the root of the case.

13. Onus to prove this issue is on management No.1.

14. Learned Representative for management No.1 argued that there is no employer-employee relationship between the management No.1 and the workman. The aforesaid arguments advanced by Learned Representative for management No.1 carries force because it is own case of the workman that she was orally appointed as 'Safai Karamchhari' (house-keeping) and joined her services on 20.04.2012 with the management No.2. AW1 in her cross-examination conducted by management No.1, admitted as correct that she has no appointment letter issued by management No.1. AW1 admitted as correct that she does not have any document to show that the amount deposited in her bank account towards salary was coming from Tech Mahindra Account. AW1 admitted as correct that she was sent by MARS Facilities-management No.2 (contractor) to work at the place of Tech Mahindra-management No.1. AW1 stated that she cannot say from which source the money was coming towards salary in her account. AW1 admitted as correct that the management No.1 has not issued her any letter of termination. AW1 in her cross-examination conducted by management No.2 admitted as correct that she was issued appointment letter dated 29.03.2017 / Exhibit 'R2/1' for the contractual period from 01.04.2017 to 31.03.2018. The perusal of appointment letter dated 29.03.2017 / Exhibit 'R2/1' would reveal that same is issued to workman Raj Kumari by MARS Facilities Pvt. Ltd. i.e. management No.2. Moreover, MW2 Sanjay Kumar in his cross-examination conducted by management No.1 admitted as correct that workman was deployed by the management No.2 with the management No.1 on the basis of contract between management No.1 and management No.2 which is Exhibit 'M1/3'. MW2 admitted as correct that management No. 2 was paying salary to the workman. MW2 admitted as correct that a complaint was received from Tech Mahindra seeking to replace the sweeper in place of workman. MW2 admitted as correct that thereafter notice dated 23.01.2018 to the workman was issued by management No.2 which is Exhibit 'M2/2'. From the version of AW1 and MW2 referred above it is duly proved on record that the workman was appointed by the contractor MARS Facilities Pvt. Ltd. i.e. management No.2. The salary was paid to the workman by management No.2. The workman was working with M/s Tech Mahindra but the primary control supervision of her work and authority to take disciplinary action including termination of services was with the contractor i.e. MARS Facilities Pvt. Ltd. Therefore, there was no direct relationship of employer and employee between M/s Tech Mahindra Ltd / management No.1 and the workman. The case law referred by Learned Representative for management No.1 reported in ***International Airport Authority of India Versus International Air Cargo Workers' Union reported in (2009) 13 SCC 374*** is applicable to the facts of present case to an extent wherein the expression 'control and supervision' in the context of contract labour has been explained by the Hon'ble Apex Court of India in para 38 and 39 which are reproduced as below:-

"38.if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by a contractor, if the right to regulate the employment is with the contractor, and the ultimate supervision and control lies with the contractor.

39. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker

works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."

15. Accordingly, this issue is decided in favour of the management No.1 and against the workman.

ISSUE No. 1 :

16. Onus to prove this issue is on the workman.

17. Under this issue workman Raj Kumari examined herself as AW1 and vide her affidavit Exhibit 'AW1/A' deposed the averments of the claim statement in toto which are not reproduced here for the sake of brevity. AW1 has supported her oral version with documents Exhibit 'AW1/1' to Exhibit 'AW1/8'.

18. On the other hand, Learned Representative for the management No.1 referred the testimony of MW1 Anuj Suri, who vide his affidavit Exhibit 'MW1/A' deposed the entire contents of the written statement of management No.1 and supported his oral version with documents Exhibit 'M1/1' to Exhibit 'M1/8'.

19. Learned Representative for management No.2 referred the testimony of MW2 Sanjay Kumar, who vide his affidavit Exhibit 'MW2/A' deposed the entire contents of written statement of management No.2 and supported his oral versions with documents Exhibit 'M2/1' to Exhibit 'M2/3'.

20. From the oral as well as documentary evidence lead by the parties it comes out that the workman was appointed through the contractor and was deployed to work as house-keeping with management No.1. The management No.2 had a valid license dated 08.08.2017 Exhibit 'M1/2' issued by Licensing Officer (Contract Labour), Union Territory, Chandigarh which was valid up to 31.12.2017. Besides, there was a valid agreement dated 01.04.2017 for house-keeping services between the management No.1 & 2 vide Exhibit 'M1/3'. The workman appointed by contractor / management No.2 was deployed with M/s Tech Mahindra Ltd. / management No.1. The management No.1 has failed to controvert the fact that the workman was working continuously as a contract labour with the management No.1 w.e.f. 20.04.2012. Prior to contractor / management No.2 the workman was deployed with the management No.1 through various other contractors including Secure Well Conservancy Services, Noida which has issued identity card Exhibit 'AW1/1', pass Exhibit 'AW1/2' and Exhibit 'AW1/4' to the workman. MW1 when put to cross-examination by the workman gave evasive reply by stating that he has no idea if Tech Mahindra used to change contractor every year since 2012. There is no denial to the fact that the workman has completed 240 days of continuous service being contract labour in 12 calendar months preceding her termination (services being terminated on 01.02.2018). Thus, the workman has fulfilled the requirement of Section 25-B of the I.D. Act.

21. As far as termination of services of the workman is concerned, the workman has alleged that her services were orally terminated w.e.f. 01.02.2018 without issuing any show cause notice, charge-sheet, without holding any inquiry and without payment of notice pay and retrenchment compensation. On the other hand, management No.2 has taken the plea that it is not a case of termination. In fact, management No.2 has received a complaint from management No.1 seeking to replace the workman. Thereafter, the management No.2 issued 15 days' prior notice dated 23.01.2018 / Exhibit 'M2/2' to the workman mentioning therein that there are various verbal complaints against her work. Previously she was issued warning verbally but she did not show any improvement. Now the written complaint has been received therefore, she has been issued prior notice from 25.01.2018 to 08.02.2018 for dispensing her services. Learned Representative for management No.2 made much stress upon the fact that the notice Exhibit 'M2/2' has been issued in compliance with the terms and conditions of appointment letter Exhibit 'M2/1', wherein in Clause - 2 it is mentioned that if her work is not found satisfactory, then prior to fixed term or stipulated time, after issuing 15 days' notice or pay in lieu of notice period, her services can be terminated. In any circumstances she will not claim any compensation or salary towards the remaining period. In this manner if she intends to leave the job, she may issue 15 days' prior

notice to the company or deposit 15 days salary in lieu of notice period and leave the job. Learned Representative for management No.2 laid much stress on the fact that terms and conditions of appointment letter dated 29.03.2017 / Exhibit 'M2/1' were accepted by the workman at the time of joining service with management No.2 and therefore the workman had put her signatures on the appointment letter under the endorsement that she (Raj Kumari) has read over and heard the above-mentioned terms and conditions and all the terms and conditions are acceptable to her. To support his argument Learned Representative for management No.2 referred cross-examination of AW1 Raj Kumari wherein she has admitted as correct that she was issued appointment letter dated 29.03.2017 / Exhibit 'R2/1' for the contractual period from 01.04.2017 to 31.03.2018. AW1 has admitted as correct that she is governed by the terms and conditions of letter issued for her appointment. AW1 admitted her signatures on appointment letter dated 29.03.2017 on 2nd page of Exhibit 'R2/1'. Learned Representative for the management No.2 further argued that the prior notice dated 23.01.2018 / Exhibit 'M2/2' was duly received by the workman as she has admitted her signatures over the same during her cross-examination to support his arguments Learned Representative for the management No.2 referred cross-examination of AW1 wherein she has admitted as correct that she used to sign in English Language. She has seen photocopy of letter dated 23.01.2018 / Mark 'R1' (later on in the management evidence the letter is proved vide Exhibit 'M2/2') issued on the letter pad of MARS Facilities Pvt. Ltd., which bears her signatures at Point 'A'. By making reference to the aforesaid version of AW1 Learned Representative for management No.2 argued that the workman was not only issued 15 days' prior notice as per the terms and conditions of the appointment letter but even otherwise the service contract of the management No.2 with the workman i.e. Exhibit 'M2/1' which was valid for the period w.e.f 01.04.2017 to 31.03.2018, expired on 31.03.2018. Besides, after 31.03.2018 workman herself stopped coming to duty. Moreover, workman has already withdrawn her EPF Contribution. To support his argument Learned Representative for management No.2 referred cross-examination of AW1 Raj Kumar wherein she has admitted as correct that she has withdrawn the amount of her EPF for the period w.e.f. 01.04.2017 to 31.01.2018, the period she remained under the employment of management No.2. Learned Representative for the management No.2 stated that AW1 has denied the suggestion as wrong that EPF withdrawal form she mentioned the reason of withdrawal 'resignation/left' against Column-9 of Form Mark 'R2'. Learned Representative for management No.2 referred Form Mark 'R2', subsequently proved vide Exhibit 'M2/3' i.e. Employees' Provident Fund Organisation, Composite Claim Form (Non-Aadhar). The Column - 9 of Exhibit 'M2/3' incorporate at Sr. No. b the reason of leaving service. The workman in Column 9(b) of Exhibit 'M2/3' has mentioned the reason of leaving service as 'resignation/left'. It is further argued by Learned Representative for management No.2 that it is not a case of retrenchment of service of the workman. The workman herself did not report for duty w.e.f. 31.01.2018 with management No.1, nor completed the period of notice, thus it amounts to abandonment of service which falls in exception to the term retrenchment under Section 2(oo) (bb) of the ID Act and the provision of Section 25-F of ID Act is not attracted. To my opinion with regard to the retrenchment / termination of services of the workman the management No.2 has taken the following pleas :—\

- a. On receipt of written complaint from the management No.1 / M/s Tech Mahindra Ltd. that the workman is not performing her duties to their satisfaction, as per Clause - 2 of appointment letter dated 29.03.2017 / Exhibit 'M2/1', the management No.2 M/s MARS Facilities issued 15 days prior notice on dated 23.01.2018 / Exhibit 'M2/2' to the workman wherein the notice period of 15 days w.e.f. 25.01.2018 to 08.02.2018 is mentioned. It is further specifically mentioned in the said notice that her last working day is 08.02.2018. The workman did not complete the notice period.
- b. As per the appointment letter Exhibit 'M2/1', the term of employment of the workman with the management No. 2 was from 01.04.2017 to 31.03.2018.
- c. The workman did not report back to the management No.2 w.e.f. 31.03.2018.

In the present case, the services of the workman did not come to an end on account of expiry of term of employment which was up to 31.03.2018. Prior to the end of the term of employment, the management No.2 on the basis of Clause 2 of appointment letter / Exhibit 'M2/1' had issued prior notice of 15 days (notice period from 25.01.2018 to 08.02.2018) to the workman. In 15 days prior notice, it is not mentioned that services of the workman with Tech Mahindra Ltd. will come to an end on 08.02.2018 and her services will continue with the management No.2 MARS Facilities Pvt. Ltd. up to 31.03.2018. The English translated version of the relevant portion of Exhibit 'M2/2' is reproduced as below :—

"Conclusion:-

You have been given 15 days prior notice that you may make arrangement of your job somewhere else, we are incompetent to retain you in service. Your prior notice of 15 days is from 25.01.2018 to 08.02.2018. Dated 08.02.2018 is your last working day. For any kind of query you may contact to the office."

22. The careful reading of the afore-mentioned contents of Exhibit 'M2/2' would reveal that the intention of the management No.2 was no to dispense with her service only with Tech Mahindra w.e.f. 08.02.2018 but to terminate her services from the management No.1 also w.e.f. 08.02.2018. It is management No.2 which has dispensed with the services of the workman before completion of her term of employment i.e. prior to 31.03.2018. Under these circumstances, the management No. 2 cannot take the plea that after 31.03.2018 the workman did not report to its office, when her services were already dispensed with w.e.f. 08.02.2018. Vide notice dated 23.01.2018 / Exhibit 'M2/2', the management No.2 did not offer any alternative job to the workman rather directed her to find some other job. Moreover, as discussed above the workman has completed 240 days of continuous service in 12 calendar months preceding her termination from service (services terminated w.e.f. 08.02.2018), as required under Section 25-B of the ID Act. Once the workman has completed 240 days continuous service during the period of 12 calendar months preceding the date of termination, the provision of Section 25-F of the ID Act stands attracted. It would be apposite to reproduce Section 25-F of the ID Act :—

"25F. Conditions precedent to retrenchment of workmen.-No workman employed in any industry who has been in continuous service for not less than one year under an employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."

23. By virtue of Section 25-F(a) the employer is bound to issue one month's notice. In the present case, instead of one month's notice, the employer/management No.2 has issued only 15 days prior notice. The Clause - 2 of appointment letter / Exhibit 'M2/1' for issuing 15 days prior notice is contrary to the provision of Section 25-F of the ID Act. Provision of Section 25-F of the ID Act shall prevail over Clause - 2 of Exhibit 'M2/1'. As per the judgment of Hon'ble Supreme Court of India referred by Learned Representative for the workman reported in **1988(4) SLR 388** titled as **Narotam Chopra Versus Presiding Officer, Labour Courts & Another**, which is applicable to the facts of the present case to an extent, if the services of an

employee are terminated in violation of Section 25-F of the ID Act, 1947, the order of termination is rendered ab-initio void and the employee would be entitled to reinstatement with continuity of service along with full back wages and other allowances.

24. The workman has withdrawn the EPF subsequent to termination of her services. Although, in the claim form of EPF / Exhibit 'M2/3', the reason for leaving service is mentioned 'resignation/left' but it is not the case of the management No.1 or management No.2 that workman has resigned from her service. In view of the prior notice Exhibit 'M2/2' issued by the management No.2, the reason of terminating the services of the workman w.e.f. 08.02.2018 is the complaint filed by the management No.1 against the work and conduct of the workman.

25. In view of the reasons recorded above Clause - 2 of appointment letter / Exhibit 'M2/1' is arbitrary and amounts to unfair labour practice, therefore, the termination of the services of the workman w.e.f. 08.02.2018 on the basis of notice dated 23.01.2018 / Exhibit 'M2/2' is illegal and hereby set aside.

26. In the present case, the management during cross-examination of AW1 offered alternative job at New Delhi. The management No.2 has taken the plea that its contract with management No.1 has already come to an end. AW1 in her cross-examination stated that after a lapse of time the official of management No.2 informed her that she cannot be re-employed with M/s Tech Mahindra as the contract of management No.2 with management No.1 has already come to an end. AW1 in her cross-examination admitted as correct that she want employment with management No.1 only. She is willing to accept the offer of management No.2 for alternative job at New Delhi. From the above mentioned version of AW1 it is duly proved on record that the workman is not ready to accept the alternative job offered at New Dehil. The contractor MARS Facilities Pvt. Ltd. had agreement at Chandigarh only with Tech Mahindra Ltd. which had already expired on 31.03.2018. Under the circumstance the contractor MARS Facilities is not able to provide alternative job to the workman in the territory of U.T, Chandigarh.

27. The workman has neither been issued one month's prior notice nor paid wages in lieu of one month's notice and has not been paid retrenchment compensation, consequently, the workman is held entitled to lump-sum compensation in the sum of ₹30,000/-.

28. Accordingly, this issue is decided in favour of workman and against the management.

Relief :

29. In the view of foregoing finding on the issue No.1 above, the present industrial dispute is partly allowed qua management No.2 to the effect that the workman is held entitled to lump-sum compensation in the sum of ₹30,000/-. The management No.2 is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the above said amount from the date of this award till the date of actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . .,

The 07.06.2023.

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 7th August, 2023

No. 13/1/9993-HII(2)-2023/11375.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 3/2022 dated 13.05.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

RAJINDER SINGH - FIELD EXECUTIVE, AGED ABOUT 34 YEARS S/O LAJJA SINGH,
R/O VILLAGE TIRA, P.O. TIRA, TEHSIL KHARAR, DISTRICT SAS NAGAR MOHALI,
PUNJAB (Workman)

AND

- (1) INFOMAX MANAGEMENT SERVICES PVT. LTD., SCO NO. 186-188, 3rd FLOOR,
CABIN NO.6, SECTOR 17, CHANDIGARH THROUGH ITS BRANCH MANGER MANOJ
CHAMOLI, MOBILE NO.9876035972
- (2) INFOMAX MANAGEMENT SERVICES PVT. LTD., HEAD OFFICE 4E, 16, 17, TYPE 4,
BLOCK B, JHANDEWAL EXTENSION, HANDEWLA, NEW DELHI -110055 THROUGH
ITS DIRECTOR SANJEEV SARIN, MOBILE NO. 9811012879. (Management)

AWARD

1. Rajinder Singh, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the workman was working with the management as Field Executive at Chandigarh office. He joined in the year 2009. Since then the workman was working with the management without any break. The salary of the workman working as Field Executive is ₹10,500/- per month plus the amount of PF deposited in his PF account plus conveyance charges. The workman was initially receiving the salary through cheque and later on the same is deposited in his account. During the entire tenure of service with the management there was no complaint against the workman and there was no complaint from any customer against him. Work & conduct of the workman was up to mark. Job profile of the workman was to collect the cheques from the field (customers of the management) and handover to persons authorised by the management. On 18.08.2020 the workman and other similar situated persons came to their work place but the Branch Manager Sh. Manoj Chamoli, Chandigarh Branch did not allow them to join their respective duties. Even the Branch Manager did not pay any heed to the request of the workman to join duty and told the workman that his services are no longer required without assigning any reason. Action of the Branch Manager Manoj Chamoli terminating the services of the workman without any charge-sheet, inquiry and without advance notice and compensation, is illegal, unlawful and wrongful. The workman along with other terminated persons filed a complaint dated 17.08.2020 against the Branch Manager Manoj Chamoli before the police authorities and during proceedings therein the Branch Manager admitted his fault regarding illegal termination / retrenchment of the workman and given an undertaking dated 25.08.2020 wherein he

mentioned that he will allow the workman and other similar persons, whose services were terminated, and can join their respective duties from 26.08.2020. On 26.08.2020 when the workman and other similar situated persons came to join their duties found that the Branch Manager has locked the office and not picking their phones. Photos of the office having locked with the date of newspaper are with the workman. Thereafter the workman sent their joining report through post. Copy of the postal receipt are with the workman and further the receipts from the website of postal department showing delivery of the letters are also with the workman. The workman also sent a demand notice to the management to accept his claim but the same is in vain. The workman has completed 240 days service with the management therefore the management has not complied with the provision of Section 25-F of the ID Act. The management retained some fresh hand in service or also got done work from competitive agency employees so the action is against the principles of natural justice. The management has not complied with the provisions of the ID Act. The management has illegally terminated the services of the workman w.e.f. 18.08.2020. The management has not issued any advance notice to the workman, never paid compensation, never conducted any inquiry and issued any charge sheet at the time of termination of the workman. Even no personal hearing was given to the workman at the time of termination. The management with malafide intention to cover their own act issued notices with regard to strike held by the workman. Those notices are afterthought act of the management and on that particular date the workman was on duty and in this regard he has sufficient proof. The management has violated the provisions of Section 25-F, 25-G & 25-H of the ID Act. The workman is unemployed after termination and is not gainfully employed anywhere though he has tried his best. Prayer is made that the services of the workman be reinstated with continuity of service, full back wages from the date of his termination and with all consequential benefits.

3. On notice, the management appeared through its authorized representative and contested the claim of the workman by filing joint written statement on 20.07.2022, wherein preliminary objections are raised on the ground that the present industrial dispute has been raised against the wrong name of the management. The complete and correct name of the management is "M/s Infomax Management Services (India) Pvt. Ltd. and not "M/s Infomax Management Services Pvt. Ltd. Since the present industrial dispute has been raised against the wrong / incomplete name of management so the present industrial dispute of the workman is strictly liable to be dismissed. The workman has not approached this Court with clean hands and opted to hide some key relevant facts in order to achieve his ulterior motive. It is submitted that when the workman started absenting from his duties un-authorisedly w.e.f. 18.08.2020, the management sent him letters (s) dated 22.08.2020, 31.08.2020, 02.09.2020 & 15.09.2020 through speed post asking the workman thereby to resume on his duties. In reply to the demand letter of the workman, the management sent reply dated 24.09.2020 under speed post reiterating their stand that they never terminated the services of the workman and asked the workman to join back on his duties. Before the Learned Conciliation Officer / Assistant Labour Commissioner during the conciliation proceedings, the management submitted a written submission on 21.10.2020, 04.11.2020 and also moved an application on 21.12.2020 asking the workman thereby to resume back on their duties and reiterated that the management had never terminated their services rather the workman had himself started absenting from his duties un-authorisedly w.e.f. 18.08.2020. Despite all above efforts of the management, the workman kept upholding his adamant attitude and never accepted the offer of the management. Hence, the present industrial dispute of the workman is strictly liable to be dismissed in the interest and furtherance of justice. The workman is not entitled to raise the claim of reinstatement before this Court as the workman had himself refused to join back on his services before the Conciliation Officer on 05.01.2021. The said factum also got recorded in the quasi judicial proceedings. Considering number of

correspondences by the management, offer before the Learned Conciliation Officer given by the management and refusal by the workman to join back on his duties, the presumption can be very easily drawn that the workman has abandoned his services and pursuing the present claim with the sole motive to satisfy his ulterior motive and mala fide intention, therefore, the present industrial dispute may be dismissed in the interest of justice.

4. On merits, it is pleaded that the workman started working for the management w.e.f. 05.01.2009 as a Pick-up Boy. The workman was duly provided with the letter of appointment at the time of his recruitment by the management. The services of the workman never got illegally terminated by the management rather the workman had himself started un-authorisedly absenting from his duties w.e.f. 18.08.2020. The management extended numerous offers to the workman to join back on his duties but unfortunately to no avail. Moreover, the workman refused to join back on his duties before the Learned Conciliation Officer on 05.01.2021. The workman had always been provided with wages in accordance with the rate as declared by the concerned State Government besides other legal facilities. It is a matter of record that the workman initially received the salary through cheque and later on the same deposited in his account. It is denied that there was not even a single complaint against the workman or the conduct of the workman was up to mark. The management always opted to ignore the mistakes(s) of the workman in order to maintain cordial relation in between the employer-employee and ensure peaceful working environment in the establishment. It is a matter of record that job profile of the workman is to collect the cheques from the field (customers of the management / organisation) and handover to persons authorised by the management. However, it is submitted that due to the nature of job, the workman used to serve only from 10 A.M. to 01:00 P.M. during his ordinary course of service. It is denied that the action of the Branch Manager - Manoj Chamoli, terminating the workman without any charge sheet or inquiry or without any advance notice / compensation is illegal. It is submitted that firstly, the services of the workman were never illegally terminated by the management rather he had himself started absenting from his duties. Secondly, even otherwise the services of the workman cannot be terminated by the person below the appointing authority. It is a matter of record that the workman along with other persons filed a complaint dated 17.08.2020 against the Branch Manager Manoj Chamoli before the police authorities. However, the issue regarding illegal termination falls beyond the jurisdictional scope of police authorities. Secondly, the workman by invoking his personal contacts / relations approached one - Mr. Ajay Singh, who was then deployed at Mohali Police Station. He called the Branch Manager through his mobile Phone No.+91-9501610016 on 25.08.2020 and asked him to report at Mohali P.S. immediately. When Sh. Manoj Chamoli, Branch Manager reached the police station, he was pressurized to write such letter which neither he ever intended to nor the contents of the same bear any reality. When the management came to know about the entire incident, the management directed the Branch Manager to file a complaint narrating all true facts at Sector 17 P.S. Chandigarh. Hence, the statement obtained by the Branch Manager by exercising force and coercion does not hold any veracity in law and therefore, the same is liable to be rejected in the interest of justice. The workman never turned back on his duties after absenting un-authorisedly from his duties w.e.f. 18.08.2020. The workman never came to join his duty on 26.08.2020. The management replied to the demand notice vide letter dated 24.09.2020 and asked the workman to join back on duties immediately. It is a matter that the workman completed 240 days or not. The workman was sent number of correspondences to join back and offer to join back was also extended before the Conciliation Officer. However, when the workman refused to join back duties, the management was left with no other alternative but to get the work done by engaging fresh hands. The management has not committed violation of any of the provisions of the ID Act. Further averments made in the preliminary objections are reiterated and rest of the averments of claim statement are denied.

Payer is made that the present claim / industrial dispute of the workman does not merit any consideration and may be dismissed.

5. The workman filed replication, wherein the contents of written statement are denied as wrong except the admitted facts of the claim and the averments of the statement of claim are reiterated.

6. From the pleadings of the parties, following issues were framed vide order dated 05.12.2022 :—

1. Whether the termination of the workman is illegal ? OPW
2. If issue No.1 is proved in affirmative, whether the workman is entitled to reinstatement with continuity of service, full back wages and all other consequential benefits ? OPW
3. Whether the workman has not approached the court with clean hands and concealed the material facts ? OPM
4. Whether the claim statement is not maintainable in the present form ? OPM
5. Relief.

7. In evidence, the workman examined-in-chief himself as AW1 and tendered into evidence his Exhibit 'AW1/A' along with copies of documents Mark 'A' to Mark 'E' and his remaining examination-in-chief deferred for want of documents.

8. On joint request of the parties, the case taken up in Pre-Lok Adalat on 03.05.2023, wherein the workman got recorded his statement, which is reproduced as below :—

"Stated that I have received demand draft No.346948 dated 01.05.2023 for a sum of ₹1,30,000/- drawn on Punjab National Bank, New Delhi - A, Block Connaught Place, (New Delhi) Delhi - 110001 towards full & final settlement of my claims including right of reinstatement. Full & final settlement receipt is Exhibit 'C1', which bears my signatures as well as thumb impression. I do not intend to further pursue my present industrial dispute being compromised. My present industrial dispute may be disposed off accordingly in the Lok Adalat."

Statement of the workman is countersigned by his Representative.

9. On 13.05.2023, case taken up in National Lok Adalat. Heard. In view of the statement of the workman recorded on 03.05.2023, this industrial dispute is disposed off as settled by way of compromise. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . .,

The 13.05.2023.

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 7th August, 2023

No. 13/1/9991-HII(2)-2023/11377.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 103/2021 dated 13.05.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

DEEPAK - FIELD EXECUTIVE, AGED ABOUT 31 YEARS, S/O HARMESH KUMAR, R/O #157, DADU MAJRA, SECTOR 14, PO Chandigarh, CHANDIGARH. (Workman)

AND

- (1) INFOMAX MANAGEMENT SERVICES PVT. LTD., SCO NO. 6, SECTOR 17, CHANDIGARH THROUGH ITS BRANCH MANGER MANOJ CHAMOLI, MOBILE NO. 9876035972
- (2) INFOMAX MANAGEMENT SERVICES PVT. LTD., HEAD OFFICE 4E, 16, 17, TYPE 4, BLOCK B, JHANDEWAL EXTENSION, HANDEWLA, NEW DELHI -110055 THROUGH ITS DIRECTOR SANJEEV SARIN, MOBILE NO. 9811012879. (Management)

AWARD

1. Deepak, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the workman was working with the management as Field Executive at Chandigarh office. He joined in the year 2017. Since then the workman was working with the management without any break. The salary of the workman working as Field Executive is ₹10,500/- per month plus the amount of PF deposited in his PF account plus conveyance charges. The workman was initially receiving the salary through cheque and later on the same is deposited in his account. During the entire tenure of service with the management there was no complaint against the workman and there was no complaint from any customer against him. Work & conduct of the workman was up to mark. Job profile of the workman was to collect the cheques from the field (customers of the management) and handover to persons authorised by the management. On 18.08.2020 the workman and other similar situated persons came to their work place but the Branch Manager Sh. Manoj Chamoli, Chandigarh Branch did not allow them to join their respective duties. Even the Branch Manager did not pay any heed to the request of the workman to join duty and told the workman that his services are no longer required without assigning any reason. Action of the Branch Manager Manoj Chamoli terminating the services of the workman without any charge-sheet, inquiry and without advance notice and compensation, is illegal, unlawful and wrongful. The workman along with other terminated persons filed a complaint dated 17.08.2020 against the Branch Manager Manoj Chamoli before the police authorities and during proceedings therein the Branch Manager admitted his fault regarding illegal termination / retrenchment of the workman and given an undertaking dated 25.08.2020 wherein he mentioned that he will allow the workman and other similar persons, whose services were terminated, and can join their respective duties from 26.08.2020. On 26.08.2020 when the workman and other similar situated persons came to join their duties found that the Branch Manager has locked the office and not picking their

phones. Photos of the office having locked with the date of newspaper are with the workman. Thereafter the workman sent their joining report through post. Copy of the postal receipt are with the workman and further the receipts from the website of postal department showing delivery of the letters are also with the workman. The workman also sent a demand notice to the management to accept his claim but the same is in vain. The workman has completed 240 days service with the management therefore the management has not complied with the provision of Section 25-F of the ID Act. The management retained some fresh hand in service or also got done work from competitive agency employees so the action is against the principles of natural justice. The management has not complied with the provisions of the ID Act. The management has illegally terminated the services of the workman w.e.f. 18.08.2020. The management has not issued any advance notice to the workman, never paid compensation, never conducted any inquiry and issued any charge sheet at the time of termination of the workman. Even no personal hearing was given to the workman at the time of termination. The management with malafide intention to cover their own act issued notices with regard to strike held by the workman. Those notices are afterthought act of the management and on that particular date the workman was on duty and in this regard he has sufficient proof. The management has violated the provisions of Section 25-F, 25-G & 25-H of the ID Act. The workman is unemployed after termination and is not gainfully employed anywhere though he has tried his best. Prayer is made that the services of the workman be reinstated with continuity of service, full back wages from the date of his termination and with all consequential benefits.

3. On notice, the management appeared through its authorized representative and contested the claim of the workman by filing joint written statement on 27.04.2022, wherein preliminary objections are raised on the ground that the present industrial dispute has been raised against the wrong name of the management. The complete and correct name of the management is 'M/s Infomax Management Services (India) Pvt. Ltd. and not 'M/s Infomax Management Services Pvt. Ltd. Since the present industrial dispute has been raised against the wrong / incomplete name of management so the present industrial dispute of the workman is strictly liable to be dismissed. The workman has not approached this Court with clean hands and opted to hide some key relevant facts in order to achieve his ulterior motive. It is submitted that when the workman started absenting from his duties un-authorisedly w.e.f. 18.08.2020, the management sent him letters (s) dated 22.08.2020, 31.08.2020, 02.09.2020 & 15.09.2020 through speed post asking the workman thereby to resume on his duties. In reply to the demand letter of the workman, the management sent reply dated 24.09.2020 under speed post reiterating their stand that they never terminated the services of the workman and asked the workman to join back on his duties. Before the Learned Conciliation Officer / Assistant Labour Commissioner during the conciliation proceedings, the management submitted a written submission on 21.10.2020, 04.11.2020 and also moved an application on 21.12.2020 asking the workman thereby to resume back on their duties and reiterated that the management had never terminated their services rather the workman had himself started absenting from his duties un-authorisedly w.e.f. 18.08.2020. Despite all above efforts of the management, the workman kept upholding his adamant attitude and never accepted the offer of the management. Hence, the present industrial dispute of the workman is strictly liable to be dismissed in the interest and furtherance of justice. The workman is not entitled to raise the claim of reinstatement before this Court as the workman had himself refused to join back on his services before the Conciliation Officer on 05.01.2021. The said factum also got recorded in the quasi judicial proceedings. Considering number of correspondences by the management, offer before the Learned Conciliation Officer given by the management and refusal by the workman to join back on his duties, the presumption can be very easily drawn that

the workman has abandoned his services and pursuing the present claim with the sole motive to satisfy his ulterior motive and mala fide intention, therefore, the present industrial dispute may be dismissed in the interest of justice.

4. On merits, it is pleaded that the workman started working for the management w.e.f. 19.01.2018 as a Pick-up Boy. The workman was duly provided with the letter of appointment at the time of his recruitment by the management. The services of the workman never got illegally terminated by the management rather the workman had himself started un-authorisedly absenting from his duties w.e.f. 18.08.2020. The management extended numerous offers to the workman to join back on his duties but unfortunately to no avail. Moreover, the workman refused to join back on his duties before the Learned Conciliation Officer on 05.01.2021. The workman had always been provided with wages in accordance with the rate as declared by the concerned State Government besides other legal facilities. It is a matter of record that the workman initially received the salary through cheque and later on the same deposited in his account. It is denied that there was not even a single complaint against the workman or the conduct of the workman was up to mark. The management always opted to ignore the mistakes(s) of the workman in order to maintain cordial relation in between the employer-employee and ensure peaceful working environment in the establishment. It is a matter of record that job profile of the workman is to collect the cheques from the field (customers of the management / organisation) and handover to persons authorised by the management. However, it is submitted that due to the nature of job, the workman used to serve only from 10 A.M. to 01:00 P.M. during his ordinary course of service. It is denied that the action of the Branch Manager - Manoj Chamoli, terminating the workman without any charge sheet or inquiry or without any advance notice / compensation is illegal. It is submitted that firstly, the services of the workman were never illegally terminated by the management rather he had himself started absenting from his duties. Secondly, even otherwise the services of the workman cannot be terminated by the person below the appointing authority. It is a matter of record that the workman along with other persons filed a complaint dated 17.08.2020 against the Branch Manager Manoj Chamoli before the police authorities. However, the issue regarding illegal termination falls beyond the jurisdictional scope of police authorities. Secondly, the workman by invoking his personal contacts / relations approached one - Mr. Ajay Singh, who was then deployed at Mohali Police Station. He called the Branch Manager through his mobile Phone No.+91-9501610016 on 25.08.2020 and asked him to report at Mohali P.S. immediately. When Sh. Manoj Chamoli, Branch Manager reached the police station, he was pressurized to write such letter which neither he ever intended to nor the contents of the same bear any reality. When the management came to know about the entire incident, the management directed the Branch Manager to file a complaint narrating all true facts at Sector 17 P.S. Chandigarh. Hence, the statement obtained by the Branch Manager by exercising force and coercion does not hold any veracity in law and therefore, the same is liable to be rejected in the interest of justice. The workman never turned back on his duties after absenting un-authorisedly from his duties w.e.f. 18.08.2020. The workman never came to join his duty on 26.08.2020. The management replied to the demand notice vide letter dated 24.09.2020 and asked the workman to join back on duties immediately. It is a matter that the workman completed 240 days or not. The workman was sent number of correspondences to join back and offer to join back was also extended before the Conciliation Officer. However, when the workman refused to join back duties, the management was left with no other alternative but to get the work done by engaging fresh hands. The management has not committed violation of any of the provisions of the ID Act. Further averments made in the preliminary objections are reiterated and rest of the averments of claim statement are denied. Payer is made that the present claim / industrial dispute of the workman does not merit any consideration and may be dismissed.

5. The workman filed replication, wherein the contents of written statement are denied as wrong except the admitted facts of the claim and the averments of the statement of claim are reiterated.

6. From the pleadings of the parties, following issues were framed vide order dated 05.12.2022:-

1. Whether the termination of the workman is illegal ? OPW
2. If issue No.1 is proved in affirmative, whether the workman is entitled to reinstatement with continuity of service, full back wages and all other consequential benefits ? OPW
3. Whether the workman has not approached the court with clean hands and concealed the material facts ? OPM
4. Whether the claim statement is not maintainable in the present form ? OPM
5. Relief.

7. On joint request of the parties, the case taken up in Pre-Lok Adalat on 03.05.2023, wherein the workman got recorded his statement, which is reproduced as below :—

"Stated that I have received demand draft No.346951 dated 01.05.2023 for a sum of ₹35,000/- drawn on Punjab National Bank, New Delhi - A, Block Connaught Place, (New Delhi) Delhi - 110001 towards full & final settlement of my claims including right of reinstatement. Full & final settlement receipt is Exhibit 'C1', which bears my signatures as well as thumb impression. I do not intend to further pursue my present industrial dispute being compromised. My present industrial dispute may be disposed off accordingly in the Lok Adalat."

Statement of the workman is countersigned by his Representative.

8. On 13.05.2023, case taken up in National Lok Adalat. Heard. In view of the statement of the workman recorded on 03.05.2023, this industrial dispute is disposed off as settled by way of compromise. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . . ,

The 13.05.2023.

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Secretary Labour,
Chandigarh Administration.

I, Tina Sharma, D/o Sita Ram Bhargava, W/o Mukesh Kumar, # 3530, Sector 15-D, Chandigarh, have changed my name to Naina Kumari Bhargava.

[947-1]

I, Mahtab Parveen, W/o Shahadat Hasan, # 37, Village Mauli Jagran, Chandigarh, have changed my name to Mehtab Parveen.

[948-1]

I, Ekta Bubna, W/o Indrajeet Kumar Singh, # 1130, First Floor, Sector 34-C, Chandigarh, have changed my name to Ekta Bubna Singh.

[949-1]

I, Indrajeet Kumar, S/o Pawan Kumar, # 1130, First Floor, Sector 34-C, Chandigarh, have changed my name to Indrajeet Kumar Singh.

[950-1]

I, Gurcharan Singh, S/o Jagar Singh, R/o House No. 11, Kishangarh, Chandigarh, have changed my name from Gurcharan to Gurcharan Singh.

[951-1]

I, Salas Tina, W/o Kamil Barla, House 340, Kachi Colony, Dhanas, Chandigarh, have changed my name from Salas Tina to Celestina Barla.

[952-1]

I, Rajinder Kumar Taneja, S/o Sh C D Taneja, R/o H. No. 2010, Sector 20-C, Chandigarh, has change my name from Rajinder Kumar Taneja to Rajinder Taneja.

[953-1]

I, Jaimala Devi, W/o Aklesh, R/o # 632-B, Small Flats Dhanas, Chandigarh, have changed my name to Neelam.

[954-1]

I, Bhupinder Kaur, W/o Randhir Singh, R/o H. No. 403, Sector 40-A, Chandigarh, have changed my name to Bhupinder.

[955-1]

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